

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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| IN RE:<br><br>MIDAMERICAN ENERGY COMPANY | DOCKET NOS. E-21621<br>E-21622<br>E-21625<br>E-21645<br>E-21646 |
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE, PROPOSING TO TAKE  
OFFICIAL NOTICE, AND NOTICE OF HEARING**

(Issued September 16, 2004)

On December 5, 2003, MidAmerican Energy Company (MidAmerican) filed petitions with the Utilities Board (Board) requesting franchises to erect, maintain, and operate a total of 122.2 miles of 345,000-volt nominal (362,000-volt maximum) electric transmission line proposed to be constructed in Pottawattamie, Cass, Adair, Madison, Dallas, and Polk<sup>1</sup> Counties in Iowa. The petitions are identified as Docket Nos. E-21621 (Pottawattamie County), E-21622 (Cass County), E-21645 (Adair County), E-21646 (Madison County), and E-21625 (Dallas County). As proposed, the transmission line would originate at the Council Bluffs Energy Center in Pottawattamie County and terminate at a proposed new electric substation in Grimes, Iowa. MidAmerican filed revisions to the petitions and additional information on April 16, May 13, June 25, July 6, and July 23, 2004.

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<sup>1</sup> MidAmerican did not file a petition for the portion of the line proposed to be constructed in Polk County. In its prepared testimony, MidAmerican must explain why it believes a petition was not required and provide the legal authority supporting its position.

MidAmerican requests that it be vested with the power of eminent domain pursuant to Iowa Code § 478.6 (2003). As of the date of this order, MidAmerican requests eminent domain authority over three parcels in Docket No. E-21646 (Madison County) and one parcel in Docket No. E-21645 (Adair County).

MidAmerican originally considered a transmission line route different from that proposed in the petitions, and held informational meetings regarding that route in Pottawattamie, Cass, Audubon, Guthrie, and Dallas Counties. Two hundred sixty individual objections to this route were filed with the Board, some of them in the form of petitions bearing multiple signatures. When MidAmerican changed the proposed route, some of these objections were withdrawn. Some objectors filed statements of no objection to the current route, but declined to withdraw their original objections. The objections from Audubon and Guthrie Counties do not appear to be related to this case, since MidAmerican no longer proposes to route the line in those counties. It appears that there remain 67 objections to the proposed route as of the date of this order.

Iowa Code § 478.6 requires a hearing to be held in an electric transmission line franchise proceeding if objections to a franchise petition are filed or if eminent domain is requested. The same code section and Board rules at 199 IAC 11.5(3) require the Board to prescribe the form of the notice to be served on owners of record and parties in possession of the property over which the use of the right of eminent domain is sought. MidAmerican filed its proposed eminent domain notice for Board approval on August 27, 2004.

On September 9, 2004, the Board issued an order consolidating the five dockets listed above, denying MidAmerican's motion for a flexible schedule, approving the proposed notice of eminent domain, and assigning the case to the undersigned administrative law judge to, among other things, establish a procedural schedule, conduct a hearing, and issue a proposed decision. The Board found that the hearing should be held in Atlantic, Iowa, pursuant to Iowa Code § 478.6.

### **THE BOARD'S AUTHORITY AND JURISDICTION**

The Board has the authority to grant franchises to construct, erect, maintain, and operate transmission lines capable of operating at an electric voltage of 69 kV or more along, over, or across any public highway or grounds outside of cities for the transmission, distribution, or sale of electric current. Iowa Code § 478.1. The Board may grant franchises in whole or in part upon such terms, conditions, and restrictions, and with such modifications as to line location and route, as may seem to it just and proper. Iowa Code § 478.4. To obtain a franchise, the petitioner must show that the proposed line or lines are necessary to serve a public use and represent a reasonable relationship to an overall plan of transmitting electricity in the public interest. Iowa Code § 478.4.

The Board also has the authority to vest the holder of a franchise with the right of eminent domain to the extent the Board may approve, prescribe, and find necessary for public use, not exceeding one hundred feet in width for right-of-way. Iowa Code §§ 478.6, 478.15. The burden of proving the necessity for public use is on the company seeking the franchise. Iowa Code § 478.15.

## THE ISSUES

In Exhibit D in each of its petitions, MidAmerican states that the proposed line "is required to provide outlet transmission service from the 790 MW Council Bluffs Energy Center Unit 4 ('CBEC-4') presently under construction. In addition, the proposed line will maintain and enhance the reliability of MidAmerican's electric transmission network in western and central Iowa." MidAmerican further states that the benefits of the overall transmission system plan (including the CBEC-4 generating facility, the transmission line proposed in this case, and other related electric facilities listed in Exhibit D) include: "1) adding approximately 790 MW of needed generating capacity to meet the growing energy demands of the Joint Owners' customers, of which approximately 600 MW will be used to meet the growing energy demands of Iowa consumers; 2) relieving transmission constraints in and around Iowa; 3) improving transmission reliability in the central and western Iowa areas; and 4) providing voltage support to the transmission system."

MidAmerican must demonstrate that the proposed transmission line is necessary to serve a public use. Iowa Code § 478.4. It must also show the proposed line represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. Iowa Code § 478.4. MidAmerican must demonstrate that the transmission line is proposed to be constructed near and parallel to roads, to railroad rights-of-way, or along division lines of land, wherever practical and reasonable, and so as not to interfere with the public use of the highways or streams of the state, nor unnecessarily interfere with the use of any lands by the occupant.

Iowa Code § 478.18. MidAmerican must also show that the proposed lines conform to the construction and safety requirements of Iowa Code §§ 478.19 and 478.20 and applicable Board rules at 199 IAC 11 and 25. In addition, the undersigned will determine whether any terms, conditions, and restrictions on the franchises, if granted, should be imposed. Iowa Code § 478.4.

Before MidAmerican can be vested with the power of eminent domain, it must demonstrate that the taking of private property described in its petition is necessary for public use. Iowa Code §§ 478.6, 478.15. If the requested franchises are granted, MidAmerican is entitled to be vested with the power of eminent domain only if and to the extent as the Board may approve, prescribe, and find necessary for public use. Iowa Code §§ 478.6, 478.15.

Any person whose rights may be affected by the proposed transmission line may file an objection with the Board. Iowa Code § 478.5. Objections must be filed in writing with the Board no later than twenty days after the date of last publication of the notice required by Iowa Code § 478.5. It appears that 67 objections to the proposed route remain as of the date of this order. The issues raised in these objections, and any issues that may be raised in objections filed in the future, are also issues in the case.

Although the proposed transmission line is related to the CBEC-4 electric generating plant currently under construction, this case does not concern issues related to the construction of, or the need for, the CBEC-4 plant. Construction of the CBEC-4 plant was approved by the Board in a "Final Decision and Order" issued

January 23, 2003, in Docket No. GCU-02-1. The "Final Decision and Order" is available on the Board's website at [www.state.ia.us/iub](http://www.state.ia.us/iub).

### **PREPARED TESTIMONY AND EXHIBITS**

All parties will be given the opportunity to present evidence and argument on all issues involved in this proceeding, and to respond to evidence presented by opposing parties. Parties may choose to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision and order that the undersigned administrative law judge will issue in this case must be based solely on evidence contained in the record and on matters officially noticed in the record. Iowa Code §§ 17A.12(6) and (8). Unless contrary arrangements are made on the record at the hearing, all evidence will be received at the hearing, and the record will be closed to any further evidence at the conclusion of the hearing.

The submission of prepared evidence prior to hearing will help to identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined by the other parties concerning the statements already made in writing. The use of prepared testimony prevents surprise at the hearing and helps each party to prepare adequately for the hearing, so that a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1), 17A.14(3) and 478.4. This procedure also tends

to diminish the length of the hearing and spares the parties the expense and inconvenience of additional hearings.

MidAmerican must file prepared direct testimony and exhibits prior to the hearing in conformance with the procedural schedule set forth below. At a minimum, MidAmerican's prepared testimony must address the issues listed above and the issues identified in the attached report by Mr. Don Stursma and Mr. Denny Hockmuth dated August 27, 2004. MidAmerican must discuss the various routes it considered and explain why it selected the proposed route. As discussed in footnote one above, MidAmerican must explain why it did not file a petition for a franchise for the portion of the line proposed to be constructed in Polk County. MidAmerican must also address the issues identified in the written objections that have been filed in this docket, state what could be done to address the concerns, discuss the consequences of any actions that might be taken in response to the concerns, and state what it would be able and willing to do to address the concerns. In addition, MidAmerican's prepared direct testimony must respond to issues raised in all written objections that are received by MidAmerican at least seven (7) days before the deadline for filing MidAmerican's prepared testimony. New written objections filed with the Board and received by MidAmerican less than seven (7) days before the deadline for filing MidAmerican's prepared direct testimony, or received by MidAmerican after it files its prepared direct testimony and at least seven (7) days prior to the deadline for filing MidAmerican's prepared rebuttal testimony, must be addressed in MidAmerican's prepared rebuttal testimony.

The Consumer Advocate Division of the Department of Justice (Consumer Advocate), and any objectors may also file prepared testimony and exhibits before the hearing in accordance with the procedural schedule in this order. Parties other than MidAmerican who choose not to file prepared testimony and exhibits before the hearing will not be precluded from participating in the proceedings. If an objector, for example, does not intend to present evidence going substantially beyond the information contained in the letter of objection, it is unnecessary for the objector to file prepared testimony. However, when a party has a substantial amount of information to present to the Board about the petition, if the information has not been previously disclosed to the Board, it should be presented in the form of prepared testimony and exhibits according to the procedural schedule established below. Similarly, if the Consumer Advocate takes the position that MidAmerican should not be granted the requested franchises, or that restrictions on the franchises should be imposed, it must file prepared testimony or a brief in support of its position according to the procedural schedule.

### **PARTIES AND OBJECTORS**

MidAmerican and the Consumer Advocate are parties to this proceeding.  
Iowa Code §§ 17A.2(8) and 475A.2.

As of the date of this order, it appears that 67 objections to the petitions filed with the Board remain. Each of these 67 objectors, and anyone else who files an objection pursuant to this order and Iowa Code §§ 478.5, is presumed to be a party to this case. However, no objector is entitled to party status merely because that

person has written a letter. To qualify as a party, the objector must be able to demonstrate some right or interest that may be affected by the granting of the franchises. Iowa Code §§ 478.5, 17A.2(5) and (8). An objector's status as a party may be challenged at the hearing, and an objector who cannot demonstrate a right or interest that may be affected by the granting of the franchises will no longer be considered a party. Therefore, at a minimum, objectors should be prepared to give evidence at the hearing that will explain the nature of their specific rights or interests they believe should be protected, and that shows how their rights or interests will be affected by the proposed transmission line. As discussed above, to the extent that this evidence goes substantially beyond information already communicated to the Board in an objection letter, it should be written down and filed as prepared testimony according to the procedural schedule established below.

If the owners or persons in possession of any of the parcels over which MidAmerican is requesting the right of eminent domain choose to file an objection, they will be considered parties to the case without any further showing.

Objections must be made in writing and filed with the Executive Secretary of the Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

Because objectors will be presumed to be parties up to the time of the hearing, an objector will receive copies of all documents that are filed in this docket after the letter of objection has been filed with the Board. If a person files an objection after some or all of the prepared testimony and exhibits have already been filed, that person will not receive copies of the previously filed documents. If a

person files an objection after some or all of the prepared testimony and exhibits have already been filed with the Board by other parties, the objector should make direct contact with the parties who have already filed prepared testimony and exhibits in order to obtain a copy of those materials.

The official file of this case will be available for inspection at the Utilities Board Records and Information Center, 350 Maple Street, Des Moines, Iowa.

199 IAC 1.9(1). Copies may be obtained, and there will be a charge to cover the cost of copying.

If it has not already done so, MidAmerican must serve a copy of the most current petition in the relevant docket<sup>2</sup> on each of the objectors who filed an objection prior to December 5, 2003, which is the date MidAmerican filed its original petitions.

After an objector has filed a letter of objection, all further communications from the objector to the Board having to do with this case (including motions or prepared testimony and exhibits) must be sent to the Executive Secretary. A party (including objectors) must file an original and eight<sup>3</sup> copies of each communication with the Executive Secretary, and the party must send one copy to each of the other parties to this case, except three copies must be served on the Consumer Advocate.

199 IAC 1.8. Along with the communication being sent, the party must file with the

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<sup>2</sup> The relevant docket is that of the county to which the objection applies.

<sup>3</sup> Ordinarily, the Board requires that an original and three copies be filed in E-Dockets. 199 IAC 1.8(4)"d." However, the rule provides that additional copies may be requested, and additional copies are needed in this case.

Board a certificate of service that conforms to 199 IAC 2.2(16), that verifies a copy of the document was served upon the other parties.

These procedures are necessary to comply with Iowa Code § 17A.17, which prohibits ex parte communication. Ex parte communication is when one party in a contested case communicates with the judge without the other parties being given the opportunity to be present. In order to be prohibited, the communication must be about the facts or law in the case. Calls to the Board to ask about procedure or the status of the case are not ex parte communication. Ex parte communication may be oral or written. This means the parties in this case may not communicate about the facts or law in this case with the undersigned administrative law judge unless the other parties are given the opportunity to be present, or unless the other parties are provided with a copy of the written documents filed with the Board.

The parties should examine Iowa Code Chapter 478, 199 IAC 11 and 25, and 199 IAC 1.8 for other substantive and procedural rules that apply to this case. There are links to the Iowa Code and the administrative rules on the Board's website at [www.state.ia.us/iub](http://www.state.ia.us/iub).

### **PROPOSAL TO TAKE OFFICIAL NOTICE**

Mr. Don Stursma, manager of the Safety & Engineering Section, and Mr. Denny Hockmuth, utility regulatory engineer, have prepared a report in the form of a memo dated August 27, 2004, concerning MidAmerican's petitions pursuant to Iowa Code § 479.11. A copy of the report is attached to this order. Pursuant to Iowa Code § 17A.14(4), the undersigned administrative law judge proposes to take official

notice of the report and of the facts contained therein, thus making them a part of the record of this case. Iowa Code §§ 17A.12(6)(c), 17A.14(4). Any party objecting to the taking of official notice of the report must file such objection as soon as possible, and no later than five days prior to the hearing. The parties will have the opportunity to contest any information contained in the report in prefiled testimony and at the hearing, and they may also cross-examine Mr. Stursma and Mr. Hockmuth concerning the contents of their report at the hearing.

### **EMINENT DOMAIN**

MidAmerican has requested the right of eminent domain for the parcels listed in Exhibit E of the petitions in Docket Nos. E-21646 (Madison County) and E-21645 (Adair County). MidAmerican must notify the Board of any changes regarding the requests and keep Exhibit E for each petition current.

### **IT IS THEREFORE ORDERED:**

1. If it has not already done so, MidAmerican must serve a copy of the most current petition in the relevant docket<sup>4</sup> on each of the objectors who filed an objection prior to December 5, 2003, the date MidAmerican filed its original petitions.
2. Each person who files a letter of objection to MidAmerican's petition in this docket will be presumed to be a party in the proceeding unless it is established at the hearing that the objector has no right or interest that may be affected by the grant or denial of the franchises.

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<sup>4</sup> The relevant docket is that of the county to which the objection applies.

3. Objections must be made in writing and filed with the Executive Secretary of the Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069. Objections must be filed no later than 20 days after the date of last publication of notice unless good cause is shown for the late filing. Objectors must file an original and eight copies of all subsequent communications to the Board with the Executive Secretary, and must send a copy of each communication to the other parties in the case, except three copies must be served on the Consumer Advocate. Along with the communication being sent, the party must file with the Board a certificate of service that conforms to 199 IAC 2.2(16), that verifies a copy of the document was served on the other parties.

4. On or before September 23, 2004, MidAmerican must file an original and three copies of a current version of the computer disc (CD) entitled "MEC CBEC to Grimes SHEET FILES" and an original and three copies of the "Aerial Photographs of Proposed Route" with the Board. MidAmerican must serve three copies of the CD and aerial photographs on the Consumer Advocate. MidAmerican must serve one copy of the CD on each of the 67 objectors and each owner and party in possession of each parcel over which MidAmerican seeks eminent domain. If any objector or owner or party in possession of an eminent domain parcel cannot access the information on the CD and wishes a hard copy of the aerial photographs, the person must notify MidAmerican, and MidAmerican must provide a hard copy to the requestor.

5. The following procedural schedule is established:

a. On or before September 23, 2004, MidAmerican must file prepared direct testimony and exhibits relating to its petitions for franchises as discussed above. In its prepared testimony, MidAmerican must address the issues discussed in the body of this order. If it files exhibits, MidAmerican should use exhibit numbers one and following.

b. On or before October 7, 2004, the Consumer Advocate and any objector may file prepared responsive testimony. If the Consumer Advocate takes the position that MidAmerican should not be granted the requested franchises, or that restrictions on the franchises should be imposed, it must file prepared testimony or a brief in support of its position on or before October 7, 2004. If it files exhibits, the Consumer Advocate should use exhibit numbers one hundred and following. If any objector files exhibits, the objector should use exhibit numbers starting with the person's initials and numbers 200 and following, such as "Exhibit AC-200," etc.

c. On or before October 14, 2004, MidAmerican may file prepared rebuttal testimony and exhibits.

d. If any party wishes to file an initial brief, other than the Consumer Advocate's brief referred to above, it must do so on or before October 21, 2004. If any party wishes to file a responsive brief, it must do so on or before October 28, 2004.

e. A public hearing for the presentation of evidence and the cross-examination of witnesses concerning the issues identified in this notice of

hearing will be held beginning at 9:00 a.m. on Wednesday, November 10, 2004, in the Cass County Community Center, 805 West 10<sup>th</sup> Street (fairgrounds), Atlantic, Iowa. If needed, the hearing will continue to be held on Thursday, November 11 and Friday, November 12, 2004. Persons with disabilities who will require assistive services or devices to observe this hearing or participate in it should contact the Utilities Board at (515) 281-5256 at least seven days in advance of the scheduled date to request that appropriate arrangements be made.

f. Required number of copies. Except as specifically provided for in paragraph four, all parties must file an original and eight copies of all documents filed with the Board. 199 IAC 1.8(4)"d."

6. The administrative law judge proposes to take official notice of Mr. Stursma and Mr. Hockmuth's report dated August 27, 2004, attached to this order, and of the facts contained therein. Any party objecting to the taking of official notice of the report should file such objection as soon as possible, and must file such objection no later than five days prior to the hearing.

7. Pursuant to Iowa Code § 478.6, a copy of this order will be served by ordinary mail upon MidAmerican, the Consumer Advocate, the remaining 67 objectors, and the persons listed in Exhibit E of the petitions in Docket Nos. E-21646 (Madison County) and E-21645 (Adair County) (the owners of record and parties in possession of the parcels over which MidAmerican requests the right of eminent domain).

8. MidAmerican must notify the Board of any changes regarding the requests for eminent domain and keep Exhibit E for each petition current.

**UTILITIES BOARD**

/s/ Amy L. Christensen  
Amy L. Christensen  
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

Dated at Des Moines, Iowa, this 16<sup>th</sup> day of September, 2004.

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**IOWA UTILITIES BOARD**  
**Safety & Engineering Section**

Docket No.: E-21621, E-21622, E-21625,  
E-21645, E-21646  
Utility: MidAmerican Energy Co.  
Date: August 27, 2004

**TO:** The Docket Files

**FROM:** Don Stursma  
Denny Hockmuth

**SUBJECT:** MidAmerican Energy Council Bluff to Grimes 345 kV Electric Transmission Line in Pottawattamie, Cass, Adair, Madison, and Dallas Counties

## **I. Background and History**

On April 8, 9, and 10, 2003, in compliance with Iowa Code § 478.2, MidAmerican Energy Co. (MidAmerican) held informational meetings in Audubon, Cass, Guthrie, Dallas and Pottawattamie Counties for a proposed 345,000 volt electric transmission line from the Council Bluffs Energy Center to a substation location near Grimes, Iowa. For Iowa Utilities Board (Board) administrative purposes the following docket numbers were assigned for the project segments in the affected counties<sup>1</sup>:

Docket No. E-21621 – Pottawattamie County  
Docket No. E-21622 – Cass County  
Docket No. E-21623 – Audubon County  
Docket No. E-21624 – Guthrie County  
Docket No. E-21625 – Dallas County

The length of the proposed project was between approximately 120 to 140 miles, depending on which of several route alternatives presented was selected. The route presented at these meetings was primarily a new route on new right-of-way, although a portion in Dallas County, and one of the alternative routes in Pottawattamie County, was proposed to be located on existing electric line easements.

There was widespread landowner opposition to this proposal. Two hundred and sixty individual objections were filed with the Board, some in the form of petitions in turn bearing multiple signatures. Frequently stated reasons for objecting were interference with land use, impact on property values, visual impact, concern over the possible health risk of electromagnetic fields, and opposition to tree removal. Many objections also noted

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<sup>1</sup> A separate franchise is required in each county traversed by the project, therefore a separate docket number is assigned to the line segment in each affected county. 199 IAC 11.3(4).

that much of MidAmerican's proposed route was in close proximity to an existing 161,000 volt electric line right-of-way, and asked why the proposed line could not be placed on the existing electric line route.

MidAmerican subsequently proposed an alternative route that followed, with minor exceptions, the existing 161,000 volt route. The original route had been more northerly and included segments in Audubon and Guthrie Counties; the more southerly alternate route did not enter those counties but instead included segments passing through Adair and Madison Counties. Routing in Pottawattamie, Cass and Dallas Counties was also different than in the original proposal. On August 27 and 28, 2003, MidAmerican held informational meetings on the alternative route in Pottawattamie, Cass, Adair, Madison, and Dallas Counties. Dockets No. E-21645 and E-21646 were assigned to the Adair and Madison County, respectively, portions of the project. In the other counties the previously assigned docket number was retained.

As the filings approached their final form after corrective and update amendments, and the list of properties for which the right of eminent domain is requested appeared final, staff examined the route, eminent domain parcels, and the properties of objectors located on the current proposed route on June 30 and July 1 and 2, 2004.

## II. The Petitions

On December 5, 2003, MidAmerican filed petitions for electric franchise for a 345,000 electric transmission line passing through Pottawattamie, Cass, Adair, Madison, and Dallas Counties. The route proposed is the alternative route presented at the informational meetings held in August, 2003<sup>2</sup>. The docket numbers assigned to the petitions, and the length of electric line for which franchise is sought in each petition, are, from west to east:

Docket No. E-21621 – Pottawattamie County – 42.8 miles.

Docket No. E-21622 – Cass County – 23.6 miles.

Docket No. E-21645 – Adair County – 23.8 miles.

Docket No. E-21624 – Madison County – 16.6 miles.

Docket No. E-21625 – Dallas County – 15.4 miles.

The total project line length is 122.2 miles.

There followed several exchanges of letters between Board staff to MidAmerican, and MidAmerican provided answers and petition amendments which responded to staff questions on the filing, corrected errors, and clarified or updated content. Dockets No. E-21645 and E-21646 were considered by staff to be in sufficient order to set for hearing

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<sup>2</sup> Under 199 IAC 11.4, a petition for franchise must be filed within two years of the informational meeting date. MidAmerican could, in theory, still file petitions for franchise for the original route until April 8, 2005.

following amendments filed on June 25, 2004. Dockets No. E-21621, E-21622, and E-21625 were considered to be in sufficient order after amendments were filed on July 6, 2004.

Each petition includes the following content:

*FORM OF PETITION*

This document requests granting of a franchise, introduces the exhibits, and makes certain statements concerning the project and process.

When the petitions were first filed, all five requested the right of eminent domain (condemnation). However, that request was later withdrawn in three of the dockets, and is now requested only in Docket No. E-21646 (Madison County) and Docket No. E-21645 (Adair County).

*Exhibit A*

Contains a legal description of the route based on the government land survey system (section, township, range). This information is included in the published notice of the franchise petition, and is attached to franchises issued by the Board as the record of the approved line location. 199 IAC 11.2(1)"a".

*Exhibit B*

A map of the route showing the proposed electric line location and its relationship to natural, public, utility and private features of the area being crossed. 199 IAC 11.2(1)"b".

*Exhibit C*

Engineering information and drawings. 199 IAC 11.2(1)"c".

*Exhibit D*

Contains information required by Iowa Code § 478.3, including on need and planning issues. 199 IAC 11.2(1)"d". MidAmerican also filed an Exhibit D-1, the "Routing Study" for the originally proposed project route, dated February 2003; and Exhibit D-2, the "Supplemental Routing Study" dated July 2003 for the route currently proposed.

*Exhibit E*

Contains property-specific information on the rights and extent of taking being sought through eminent domain. 199 IAC 11.2(1)"e".

*Exhibit F*

A showing that notice of the petition filing was made to the owners of potentially affected utilities and other infrastructure near the route. 199 IAC 11.2(1)"f".

*Exhibit G*

An affidavit required by Iowa Code § 478.3 stating that required informational meetings were held and providing copies of the forms of notice used. 199 IAC 11.2(1)"g".

Iowa Code § 478.6 states that a public hearing must be held if an objection is filed or if eminent domain is requested. Objections are on file in four of the five counties (there are none in Docket No. E-21646 – Madison County), and eminent domain is requested in Docket No. E-21646 (Madison County) and Docket No. E-21625 (Dallas County). Since objections are on file and/or eminent domain is requested in all five dockets, hearing is required.

Staff recommends the dockets be consolidated for hearing. All are interrelated as part of a larger project, and the “public use” and “reasonable relationship” tests of Iowa Code § 478.4, as well as the routing of any one segment, might be influenced by other segments.<sup>3</sup>

IOWA CODE § 478.6 further states that when a hearing is required, if a proposed line is more than a mile long the hearing must be held in the county seat of the county at the midpoint of the proposed line. The midpoint of the total project in these dockets falls in Cass County, so the hearing must be in Atlantic.

### **III. Description of Project**

The project as proposed consists of 122.2 miles of 345,000 volt electric transmission line originating at the Council Bluffs Energy Center and terminating at a proposed new electrical substation inside the corporate limits of Grimes, Iowa.<sup>4</sup>

With minor exceptions, the new 345 kV circuit will be double circuited with other 161,000 or 345,000 volt transmission circuits on common structures and on existing electric transmission line right-of-way. No distribution underbuild would be installed on this line.

The majority of the line will consist of steel poles, 120 to 150 feet tall, with an average spacing of 900 feet and a maximum spacing of up to 1360 feet in Pottawattamie County and 1050 feet in the other effected counties. Near the Council Bluffs Energy Center, for about half a mile (four structures) the new line would be mounted on existing steel lattice towers that currently carry a single 345 kV circuit. There will also be half a mile of new single circuit 345 kV line on steel poles near the Energy Center plus single circuit segments bypassing substations en route. With steel poles, there will be no anchors or guy wires in addition to the poles themselves.

The proposed double 345 kV circuit in Pottawattamie County would be supported on existing steel tower structures that are close to 30 years old, and currently carry conductors for only one circuit. *MidAmerican should provide evidence in prefiled*

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<sup>3</sup> Gannon vs. Iowa State Commerce Commission, Polk County District Court, Case No. 92922 (1970).

<sup>4</sup> The project would also pass near substations near Avoca, Earlham and Booneville; however, the docket filings do not indicate an intent to feed those substations from the new line.

*testimony or at hearing that these structures remain structurally sound and capable of supporting the weight of a second set of 345 kV circuit conductors.*

On the steel poles, the conductors will be supported on 22 ft. long horizontal steel arms and V-connected suspension insulators. Under worst case conditions the conductors would be at least 30 feet above the ground or roads being crossed. Each circuit will be protected from lightning by a shield wire on 14 ft. steel arms at the top of the pole. The shield wires will also contain fiber optic cable that will carry communications for the monitoring and operating of MidAmerican's electrical facilities.

The width of the existing right-of-way is 100 feet in the 161 kV route to 150 feet on the 345 kV route. On most of this right-of-way, the single steel poles would replace existing wooden H-frame supports, and would be further apart longitudinally than the H-frames. The poles would be placed seven feet from the centerline of the easement. Staff understands that MidAmerican intends to keep the existing 161 and 345 kV circuits in operation, to the extent possible and necessary, during the line reconstruction, and this offset is necessary to allow existing circuits to remain in service as the lines are rebuilt. *MidAmerican should explain in prefiled testimony or at hearing how service from the existing transmission lines will be maintained, and how the transfer of service to the new poles will be conducted.*

Staff review has concluded that the design of the proposed facilities as described in Exhibit C is consistent with the National Electrical Safety Code and other safety provisions adopted by the Board in rule 199 IAC 25.2.

However, there are several additional safety code issues for which additional information is needed.<sup>5</sup> At the following locations, route examination found buildings or grain bins that were close enough to the electric line that additional clearances may be required:

Pottawattamie County

- Along the south line of the NW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 15, T77N, R38W – grain bins and a building.
- Near the NW corner of the SE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 14, T77N, R39W – building.
- Near the NW corner of the SW  $\frac{1}{4}$  of Section 12, T74N, R43W – residence.
- Near the NE corner of, and near the middle of, the SE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 15, T74N, R43 – a group of residences, some of which appear to extend into the easement.
- SW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 15, T74N, R43 - residences, one of which appears to extend into the easement.

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<sup>5</sup> Ordinarily these issues would be resolved through exchanges with MidAmerican prior to the staff report, but in the interest of expediting the schedule MidAmerican will be asked to respond in prefiled testimony or at hearing.

- NW ¼ NW ¼ SE ¼ of Section 15, T74N, R43 – residence under conductors (may be vacant).

Cass County

- Near the SE corner of the NE ¼ of the SE ¼ of Section 16, T77N, R37W – steel building and grain bins.

Adair County

- Near the SE corner of the NE ¼ of the SE ¼ of Section 16, T77N, R32W – grain bins.

Madison County

- Near the SW corner of the NW ¼ of Section 3, T77N, R27W – silo and grain bin.

(None in Dallas County)

*MidAmerican should address in prefiled testimony or at hearing whether the National Electrical Safety Code requires additional clearances at these locations, and if so what clearances would be provided.*

**IV. Requirements of Iowa Code Section 478.4**

Under Iowa Code § 478.4, to grant a franchise the Board “*shall make a finding that the proposed line or lines are necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest.*”

**a. Necessary to serve a public use**

In the petition Exhibits D MidAmerican includes the following statements:

The proposed line is required to provide outlet transmission service from the 790 MW Council Bluffs Energy Center Unit 4 (“CBEC-4”) presently under construction. In addition, the proposed line will maintain and enhance the reliability of MidAmerican’s transmission network in western and central Iowa.

The need for the proposed line was developed as part of the overall transmission plan for CBEC-4 through a coordinated power system study process including the Joint Owners of CBEC-4 and several other transmission system owners such as the Omaha Public Power District and the Nebraska Public Power District.

.....

The benefits of the CBEC-4 project, including the transmission plan for CBEC-4, include: 1) adding approximately 790 MW of needed generation capacity to

meet the growing energy demands of the Joint Owner's customers, of which approximately 600 MW will be used to meet the growing energy demands of Iowa consumers; 2) relieving transmission constraints in and around Iowa; 3) improving transmission reliability in central and western Iowa areas; and 4) providing voltage support to the transmission system.

Besides the terminus at the Grimes substation, the project would pass near substations near Avoca, Earlham and Booneville; however, the docket filings do not indicate an intent to feed those substations from the new line.

*MidAmerican should expand on the brief Exhibit D summary statements in its prefiled hearing testimony or at hearing. The additional information should include:*

- *Why the new electric generation could not be carried by the existing transmission network.*
- *Why a new 345,000 volt line was selected.*
- *An explanation of how this line would relieve constraints, enhance reliability and provide voltage support.*
- *Whether this line may also eventually supply other substations en route, and the benefits of any such connections.*

During the informational meetings questions were asked about, and several of the objections filed challenged, the need for the new generating facility from which the new 345 kV line would transport power. The need for this generation has been addressed by the Board in a previous proceeding and is not at issue in these franchise dockets. Construction of the Council Bluffs Energy Center Unit 4 (CBEC-4) was approved by the Board in a "Final Decision and Order" issued January 23, 2003<sup>6</sup>, in Docket No. GCU-02-1, "In Re: MidAmerican Energy Company;" and a "Certificate of Public Convenience, Use, and Necessity" was issued in the docket on June 27, 2003.<sup>7</sup> *However, for the benefit of interested persons not familiar with that docket or the electric generation facility approval process, staff recommends that MidAmerican include in its prefiled testimony or at hearing a summary of the need for the generation facility and the legal criteria it was required to meet to receive Board approval.*

***b. Represents a reasonable relationship to an overall plan of transmitting electricity in the public interest***

In addition to the quotations cited in the preceding section, the petition Exhibits D further state:

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<sup>6</sup> In its January 23, 2003, order, the Board considered the benefits of both the generation facility and related planned transmission additions, but did not approve a route or design for them and specified that transmission additions would be addressed in future E-docket filings.

<sup>7</sup> Copies of the order and certificate are available on the Board's website, [www.state.ia.us/iub](http://www.state.ia.us/iub)

The transmission plan was endorsed and supported by the two Mid-Continent Area Power Pool ("MAPP") sub-regional planning groups with oversight responsibility for the project. The MAPP Design Review Subcommittee, the MAPP committee with authority for approving generator and transmission line connections to the MAPP system, has approved the addition of CBEC-4 and the transmission facilities required to support CBEC-4 as meeting MAPP reliability criteria.

In subsequent additional statements, MidAmerican states that the MAPP subcommittee specifically reviewed and accepted the plan to construct the new 345 kV line on common towers with existing 161 or 345 kV circuits as still meeting MAPP's reliability criteria.

Petition Exhibits D items A through H contain responses to a series of issues that Iowa Code §478.3(2) requires petitioners to address in a franchise filing. They deal with the relationship of the proposed project to economic, electrical system, public, and land use considerations, present and future. The allegations by MidAmerican in these items contain further information to support a "reasonable relationship" finding.

Although the proposal to place the new 345 kV line on existing common right-of-way with other circuits has generated much less opposition than the original proposal for a new route on new right-of-way, it does have a significant disadvantage. Placing both circuits on common structures maximizes the risk of losing both circuits in a single incident.<sup>8</sup> The February 2003 Routing Study (Petition Exhibit D-1), on Page 4-2, states that it was considered necessary to keep the proposed line at least one mile away from the existing 161 kV CBEC to Booneville due to reliability concerns, to "minimize the likelihood that both lines would be taken out of service simultaneously due to a storm or other major event." However, the July 2003 Supplemental Routing Study (Petition Exhibit D-2), on Page 1-2, states that the public and agency response to the original route proposal led to reconsideration of an existing right-of-way route, and that:

Through additional evaluation, MidAmerican determined that the potential reliability concerns with double-circuiting the existing lines could be addressed through a combination of other system upgrades and projects.

Exhibit D-2, on Page E-1, recommends the currently proposed route with the caveat "assuming the reliability concerns associated with this alternative can be resolved."

*To aid in verifying that double-circuiting the entire length of this project will not adversely impact the reliability of the transmission network, MidAmerican should provide in its prefiled testimony or at hearing information on:*

- *The basis upon which MAPP concluded that this design would meet their reliability standards.*

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<sup>8</sup> An incident could be an event such as a tornado, ice storm, structural failure, or sabotage/terrorism.

- *What other upgrades or projects will be undertaken and how they would enhance network reliability.*

## **V. The Route**

The location of the proposed route is described in Petition Exhibits A and B, and in Exhibit D-2. Exhibit D-2 contains, in staff's opinion, an excellent summary description and evaluation of the route proposed. The following paragraphs are excerpted from that study, with a few staff notes [inserted]:

From Section 2, Route Analysis.

The transmission line route leaves CBEC plant property [as a double circuit 345 kV line on steel lattice towers], crosses Interstate 29 then turns north and parallels Interstate 29 for 0.5 miles [as a single circuit line on steel poles] before turning to the northeast. The line then proceeds in a diagonal [as a double circuit 345/161 kV line on steel poles] for approximately 32 miles to the northeast, to the Avoca Substation area (located to the southwest of the town of Avoca).<sup>9</sup>

East of the Avoca Substation, the route continues along the existing CBEC to Booneville 161-kV transmission line, approximately 2 miles south of Interstate 80 (I-80). The route heads east along the quarter-quarter section line. The route continues east for approximately 10 miles, traveling approximately 1 mile south of Walnut, exiting Pottawattamie County and entering Cass County. The route continues east approximately 24 miles, crossing north of Anita, existing Cass County and entering Adair County. Once in Adair County, the route continues east, still approximately 2 miles south of I-80, for approximately 11 miles and then turns to the northeast for less than 1 mile, leaving the quarter-quarter section line and following the quarter section line. The route continues on the quarter section line for approximately 11 miles, continuing approximately 1.5 miles south of Stuart, exiting Adair County and entering Madison County.

In Madison County, the route continues to the east for approximately 2 miles, and then turns northeast for approximately 1.5 miles, passing the Earlham Substation area. The route continues east on the quarter-quarter section line for approximately 6 miles, approximately 1 mile south of Earlham, and again turns to the northeast, then continues east on the quarter section line. The route continues east for approximately 3 miles and then travels northeast diagonally

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<sup>9</sup> The new 345-kV line would not connect to the Avoca Substation. Rather it would route around the south side of the substation, picking up again with the existing 161-kV line on the east side of the substation.

for approximately 4 miles, exiting Madison County, entering Dallas County, and intersecting the existing Booneville to Sycamore 345-kV transmission line, in the Booneville Substation area.

Route E1<sup>10</sup> departs from the CBEC to Booneville 161-kV transmission line just west of the Booneville Substation. It turns north [as a double circuit 345 kV line on steel poles] and follows the Booneville to Sycamore 345-kV transmission line. The line continues north following quarter and quarter-quarter section lines for approximately 10.5 miles and then turns to the east along the quarter-quarter section line. The line continues east for approximately 5.5 miles to the proposed Grimes Substation.

From the Executive Summary.

Although approximately 40 miles of the route would not be located along lines of land division, this route is shorter in length and confined to an existing transmission line corridor, minimizing the impacts to natural and human resources. The route also takes a more direct route from endpoint to endpoint, which reduces the number of angles greater than 30 degrees along the route. Angle structures are more expensive, occupy more land, and are more visible. The reduced number of heavy angles therefore, would result in some cost savings, potentially decrease the land taken out of agricultural production, and reduce the visibility of the new line.

The reduced length would result in less impact to cropland, wetlands, stream crossings, and sensitive species habitat. The use of already cleared right-of-way also avoids the need to clear additional woodland. Compared with the two alternatives recommended in the February 2003 Routing Study, route E1 would cross 16 miles less cropland, incorporate 5 acres less wetlands into the right-of-way, require over 140 acres less of woodland be cleared, cross over 65 fewer streams, and include approximately 150 acres less sensitive species habitat. Route E1 would, however, impact approximately 6.7 acres more pasture than the other two alternatives.

Additionally, since Route E1 would consist of rebuilding an existing transmission line, the visual contrast would be minimal. A taller, single-pole structure would replace the existing H-frame structures. This route would only cross one scenic byway and one historic trail, but minimal impact to the aesthetics is expected since the byway and trail are already crossed by the existing transmission line and several other transmission and distribution lines in the area.

Route E1 is located in a predominantly rural surrounding; however, the route would still be constructed within 130 feet of 16 residences, the highest residential

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<sup>10</sup> Route E-1 is the supplemental route study identifier for the route MidAmerican is now proposing.

impact of all of the route alternatives. These residences are predominantly located in two subdivisions located in the more developed western section of the route. Some of these houses appear to be encroaching within the existing CBEC to Avoca portion of the right-of-way. The remaining residences are spread along the length of the route, and primarily consist of individual farmsteads and rural residences. In addition, Route E1 would be constructed within 130 feet of 27 non-residential structures (generally these include outbuildings associated with the farmsteads and rural residences), which are located throughout all portions of the route.

Route E1 along entirely existing transmission lines was recommended because it would reduce the overall impacts of the project to natural and human resources within the project area, as compared to alternatives requiring new right-of-way. However, the route does not follow lines of land division for 32 percent of the length. In addition, Route E1 would cost more due to the increased cost of constructing the new line while keeping the existing line in service, reconstructing the existing line, removing the existing line, and the costs for other system upgrades necessary to ensure reliability. Route E1 would avoid potential land use conflicts by being confined to an existing transmission line corridor and by its location in a predominantly rural surrounding, away from communities for the majority of the route. Based on its lower overall impacts, Route E1 is recommended for the proposed project.

Iowa Code § 478.18(2) contains these provisions for the routing of electric lines:

A transmission line shall be constructed near and parallel to roads, to the right-of-way of the railways of the state, or along the division lines of the lands, according to the government survey, wherever the same is practicable and reasonable, and so as not to interfere with the use by the public of the highways or streams of the state, nor unnecessarily interfere with the use of any lands by the occupant.

As noted above, approximately 40 miles (32%) of the proposed route does not follow division lines of land. However, that does not mean the Board cannot find a route of this nature is reasonable. Route planning that begins with examining routes meeting Iowa Code 478.18(2) criteria is consistent with 199 IAC 11.1(7) and court precedent. See Anstey v. Iowa State Commerce Commission, 292 N.W. 2d 380 (Iowa 1980). Petition Exhibit D-1 shows that that routes near and parallel to roads, railway right-of-way, and division lines of land were given strong consideration in the initial routing study, and the route originally proposed by MidAmerican did follow division lines of land.

As discussed above, following an existing route has certain benefits in that the additional impact on lands and land use, if any, is less than if the line were installed on a new route. The Board has in the past found it reasonable to utilize an existing route that did

not follow division lines of land based primarily on findings that interference with land use would be minimized.<sup>11</sup>

Staff believes the route proposed by MidAmerican for this project is reasonable and acceptable. This is, however, contingent upon the Board concluding that reliability will not be adversely affected by double circuit construction.

## VI. Eminent Domain

Iowa Code § 478.15 gives the Board the authority to grant the right of eminent domain “to such extent as the utilities board may approve, prescribe and find to be necessary to serve a public use.”

As of the date of this report, eminent domain is requested for three properties in Madison County (Docket No. E-21646), designated as Tracts IA-MD-007.000, IA-MD-028.000, and IA-MD-003.000 (Exhibits E-1, E-6, and E-7, respectively); and one property in Adair County (Docket No. E-21645), designated as Tract IA-AR-023.000 (Exhibit E-1). None of the persons with ownership interest in these parcels has filed an objection.

The tracts are all on the proposed 345/161 kV double circuit portion of the route. MidAmerican has easements on these properties for the existing 161 kV transmission line. However, those easements are for “an electric transmission line” or “a transmission line” of unspecified voltage. MidAmerican is seeking additional easement rights specifically for a 345,000 volt line.

The proposed easements are for a 100 ft. wide strip of land coincident with the existing easements. The proposed electric transmission line would be located seven feet from the centerline of the easement. It is staff’s understanding that the existing H-frame structures are on the centerline, and the seven foot offset is needed to install new poles and conductors while keeping the existing 161,000 volt line in service.

Current land use on the eminent domain properties is agricultural, except for Tract IA-MD-028.000. This property contains a gravel quarry; it could not be determined in the field if quarrying is taking place in or near the area under the electric line. It did not appear that any buildings would be affected by the proposed easements on any of these properties.

On Tract IA-MD-007.000 in Madison County, MidAmerican seeks rights only over the south 11 feet of the property. The existing easement specifies that it is for overhang rights only, and that no structures or support facilities will be placed on the property. The proposed eminent domain easement contains no such limitations. With the proposed

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<sup>11</sup> “Decision and Order Granting Franchise” in Dockets No. E-21043, E-21044, E-21045, issued to MidWest Power on March 9, 1993. See also Gorsche v. Midwest Power, 529 N.W.2d 291 (Iowa 1995).

steel poles, which do not require guys or anchors, it appears unlikely that MidAmerican would have any use for this easement other than overhang. *MidAmerican should explain in prefiled testimony or at hearing why the proposed eminent domain easement is not limited to overhang rights.*

Copies of the existing easements were provided for the eminent domain properties. Although worded differently, except as discussed above it does not appear that the proposed eminent domain easements would place restrictions on landowner use of the property, or, other than allowing the 345 kV circuit, grant MidAmerican rights, that are materially different than what is already contained in the current easements. The rights MidAmerican seeks do not appear unreasonable or unnecessary for its purposes. Nor does available information show any of the Iowa Code §§ 478.15 and .20 limitations apply to these parcels.

It appears at least arguable that, under Iowa Code §§ 478.15 and 6B.2B, for eminent domain to be “necessary” a party seeking eminent domain must have made a good faith effort to obtain voluntary easements. *MidAmerican should address this consideration in prefiled testimony or at hearing.*

Under Iowa Code 478.6 and 199 IAC 11.5(3), owners of record and parties in possession of property over which the right of eminent domain is sought must be served a certified mail written notice of the hearing, using a form of notice prescribed by the Board. These letters are drafted by the petitioner and approved for use by the Board. On August 27, 2004, MidAmerican filed copies of the notice letters proposed for use in the relevant dockets. These letters and attachments appear acceptable.

## **VII. Objections**

An “Objection Status Report” is attached to this report which shows the number of objections filed, withdrawn, and remaining.

After the first informational meetings, two hundred and sixty individual objections were filed with the Board, some in the form of petitions in turn bearing multiple signatures. Frequently stated reasons for objecting were interference with land use, impact on property values, visual impact, concern over the possible health risk of electromagnetic fields, and opposition to tree removal. Many objections supported locating the new line on MidAmerican’s existing 161,000 volt electric line right-of-way.

After MidAmerican elected to pursue an alternate route, 91 objections were withdrawn. In 28 other instances objectors filed statements of no objection to the new route, but declined to withdraw their original objections as long as the original route remained a possibility. The 107 objections from Audubon and Guthrie Counties appear to now be moot, at least to the current route proposal, since no line is now proposed in those counties. Other objections remaining on file in the active dockets do not appear relevant

to the alternative route proposal, and some of them support the alternate route now proposed.

Only 11 of the objections on file appear directly relevant to the route as currently proposed, and one of those is uncertain. Those 11 will be discussed below.

Docket No. E-21621 – Pottawattamie County – 3 objections.

On May 22, 2003, an objection was filed by Roger and Joan Bowen, residents of a residential development area east of Council Bluffs. The electric line and easement would cut across the north corner of the irregularly shaped property, with the residence approximately 350 feet from the edge of the easement. The objection expresses concern over the possible health risk of electromagnetic fields, impact on the property values of his home and others in the area, and supported an alternative route that would bypass this area. MidAmerican is not requesting eminent domain to obtain an easement on this property. This presumably means MidAmerican has obtained an easement from the Bowens for this project. However, the signing of an easement does not negate or diminish an objection.<sup>12</sup>

On September 8, 2003, separate objections were filed by Mark Jensen and Julie Jensen, who gave the same address and indicated the same property. The location given is a rural residence near Walnut, Iowa. It appears the electric line does not cross their property, but the easement abuts their north property line approximately 150 feet from the house. Both express concern over the possible health impacts of electromagnetic fields.

The final objection is from Gail Geo. Holmes, representing the Pottawattamie County Trails Association, filed April 4, 2003. The Association was concerned over possible impact on historic and archaeological sites. While this filing appears directed at the alternate route on new right-of-way that MidAmerican described at the first informational meeting, staff cannot be certain that is the intent. Four other objections that expressed concern over cultural or natural resources included comments favoring use of the existing line route. The Supplemental Routing Study, Petition Exhibit D-2, anticipates no impact on cultural or historical sites (Pages 3-11, 3-12) from the currently proposed route.

Docket No. E-21645 – Adair County – 3 objections.

Objections in this docket were filed by Lyle Beane on September 12, 2003; by Andrea Beane on September 17, 2003; and by Curt Beane on September 18, 2003. All are in regard to the same rural residence southeast of Stuart in Section 13, T77N, R31W.

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<sup>12</sup> "Decision and Order Granting Franchise" in Dockets No. E-21043, E-21044, E-21045, issued to Midwest Power on March 9, 1993.

Andrea and Curt Beane appear to live on the property. The objections express concern over the possible health risk of electromagnetic fields. It appears the residence would be around 150-200 feet from the existing and proposed electric lines. It also appears that the electric line and easement are adjacent to, but not on, their property. Eminent domain is not requested for this or adjacent properties.

Docket No. E-21625 – Dallas County – 5 objections.

On April 21, 2003, an objection was filed by Robert and Annetta Schaefer. The objection expresses concern over the possible health risk of electromagnetic fields and the impact on property values. They state their residence is approximately 1000 feet from the existing electric line. It is on the north side of Urbandale and inside the city limits. Electric lines inside of city limits are not subject to Board franchise authority, but the Board's action in his docket would influence events there also.

On July 2, 2003, an objection was filed by Galen Buterbaugh, who contends that the value and development potential of his property north of Urbandale would be decreased. The property is currently farmed ground with no buildings. It appears the electric line route is just south of this property, and would not cross it. He suggests "Keep route as it is in north of Sec." The meaning of this is unclear, as in this area both the original and current route proposals are identical (double circuit 345 kV on existing single 345 kV circuit kV route) and through the south part of this section.

Bruce E. and Becky Jo Kuehl have filed two objections in this docket. The first, filed April 28, 2003, concerns a property north of Urbandale and north of the electric line route. They urged that the line be kept on the route as proposed, expressing concern over the effect on property values and development potential if it were located on their property. As both the original and current routes are on the existing 345 kV right-of-way south of their property, it appears the route as proposed addresses this concern.

The second Kuehl<sup>13</sup> objection was filed September 18, 2003, and concerns a different property they own southwest of Waukee. The project was not affected by the original proposed route, but is crossed by the current proposed double circuit 345 kV route. They object to the impact on property values and development potential, contend the easement payment being offered by MidAmerican is inadequate, and urge that the line be on the originally proposed route through Guthrie and western Dallas County. MidAmerican is not requesting eminent domain to obtain an easement on this property. This presumably means MidAmerican has obtained an easement from the Kuehls for this project. However, as previously stated the signing of an easement does not negate or diminish an objection.

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<sup>13</sup> Although the address and phone number are not the same on the two objections, the names are identical and the signatures similar, so these are presumed to be the same individuals.

On July 9, 2004, an objection was filed by David and Johnine Schlindwein, who own property southeast of Van Meter. They objected to the conduct of MidAmerican's right-of-way agents, and contended they had not received notice of the informational meeting as required by law, so a franchise should be denied. MidAmerican responded that a minor adjustment in the location of facilities had made an easement on this property unnecessary. The docket record showed that eminent domain had at one time been requested for a strip of land 15 feet wide along the east side of this property, apparently for overhang, but that this request was subsequently withdrawn. The action by MidAmerican appears to have rendered this objection moot.

*MidAmerican should address all of the above objections in its prefiled testimony or at hearing.*

Staff will also note that a series of objections and a petition were filed by Carl H. Hays of Adel. All concerned properties in Adel Township in Dallas County, which was crossed by the original proposed route but is not crossed by the current proposed route. On August 9, 2004, MidAmerican filed a "Motion for Setting of Expedited Flexible Procedural Schedule." On August 16, 2004, Mr. Hays filed a resistance to that motion. Since it appears Mr. Hays intends to remain a participant in this case, his objector status is noted.

No objections to the currently proposed route are on file for Docket No. E-21622 – Cass County, or Docket No. E-21624 – Madison County.

## **VIII. Conclusion**

Board staff finds the petitions in these dockets to be sufficiently in order to be set for hearing.

IOWA CODE section 478.6 states that a public hearing must be held if an objection is filed or eminent domain is requested. As objections are on file, and/or eminent domain is requested, in all dockets for this project, a public hearing is required.

The five dockets are all interrelated as parts of a larger project. It is recommended these dockets be consolidated for hearing.

IOWA CODE § 478.6 states that when a hearing is required, if the proposed line is more than a mile long the hearing must be held in the county seat of the county at the midpoint of the proposed line. The line exceeds a mile in length, and the midpoint of the project is in Cass County, therefore the hearing must be held in Atlantic.

IOWA CODE section 478.6 and 199 IAC 11.5(3) require the Board to prescribe the form of written notice to be served upon the owners or occupants of eminent domain parcels. Letters that appear acceptable were filed on August 27, 2004. A decision on acceptance will be required from the Board, or from a Presiding Officer if the dockets are so assigned.

In these dockets particular consideration will be needed of whether the reliability aspect of double circuiting this line with another major electric transmission line is acceptable under the "reasonable relationship" test of Iowa Code § 478.4

This report identifies, in italic print, a number of areas that staff recommends MidAmerican be instructed to address in prefiled testimony or at hearing to improve the record on which a decision will be based.

### Objection Status Report

1. Objections filed to originally proposed route:

| Pottawattamie<br>(E-21621) | Cass<br>(E-21622) | Audubon<br>(E-21623) | Adair<br>(E-21645) | Guthrie<br>(E-21624) | Madison<br>(E-21646) | Dallas<br>(E-21625) |
|----------------------------|-------------------|----------------------|--------------------|----------------------|----------------------|---------------------|
| 60                         | 60                | 4                    | N/A                | 103                  | N/A                  | 33                  |

2. Additional objections filed to revised route:

| Pottawattamie<br>(E-21621) | Cass<br>(E-21622) | Audubon<br>(E-21623) | Adair<br>(E-21645) | Guthrie<br>(E-21624) | Madison<br>(E-21646) | Dallas<br>(E-21625) |
|----------------------------|-------------------|----------------------|--------------------|----------------------|----------------------|---------------------|
| 1                          | 0                 | N/A                  | 3                  | N/A                  | 0                    | 1                   |

3. Total objections filed to revised route [#1 + #2]:

| Pottawattamie<br>(E-21621) | Cass<br>(E-21622) | Audubon<br>(E-21623) | Adair<br>(E-21645) | Guthrie<br>(E-21624) | Madison<br>(E-21646) | Dallas<br>(E-21625) |
|----------------------------|-------------------|----------------------|--------------------|----------------------|----------------------|---------------------|
| 61                         | 60                | N/A                  | 3                  | N/A                  | 0                    | 34                  |

4. Objections withdrawn by landowners:

| Pottawattamie<br>(E-21621) | Cass<br>(E-21622) | Audubon<br>(E-21623) | Adair<br>(E-21645) | Guthrie<br>(E-21624) | Madison<br>(E-21646) | Dallas<br>(E-21625) |
|----------------------------|-------------------|----------------------|--------------------|----------------------|----------------------|---------------------|
| 43                         | 30                | N/A                  | 0                  | N/A                  | 0                    | 18                  |

5. Remaining objections (original and current routes) [#3 – #4]:

| Pottawattamie<br>(E-21621) | Cass<br>(E-21622) | Audubon<br>(E-21623) | Adair<br>(E-21645) | Guthrie<br>(E-21624) | Madison<br>(E-21646) | Dallas<br>(E-21625) |
|----------------------------|-------------------|----------------------|--------------------|----------------------|----------------------|---------------------|
| 18                         | 30                | N/A                  | 3                  | N/A                  | 0                    | 16                  |

6. Landowners included in No. 5 who have also filed letters stating no objection to the currently proposed route:

| Pottawattamie<br>(E-21621) | Cass<br>(E-21622) | Audubon<br>(E-21623) | Adair<br>(E-21645) | Guthrie<br>(E-21624) | Madison<br>(E-21646) | Dallas<br>(E-21625) |
|----------------------------|-------------------|----------------------|--------------------|----------------------|----------------------|---------------------|
| 5                          | 23                | N/A                  | 0                  | N/A                  | 0                    | 0                   |

7. Remaining objections specific to the currently proposed route:

| Pottawattamie<br>(E-21621) | Cass<br>(E-21622) | Audubon<br>(E-21623) | Adair<br>(E-21645) | Guthrie<br>(E-21624) | Madison<br>(E-21646) | Dallas<br>(E-21625) |
|----------------------------|-------------------|----------------------|--------------------|----------------------|----------------------|---------------------|
| 4*                         | 0                 | N/A                  | 3                  | N/A                  | 0                    | 4                   |

\*Includes one objection where it is unclear if it applies to the current route.